

HCS HJR 31 -- APPOINTMENT OF JUDGES

SPONSOR: Tilley (Lembke)

COMMITTEE ACTION: Voted "do pass" by the Special Committee on General Laws by a vote of 4 to 2.

Upon voter approval, this proposed constitutional amendment repeals the nonpartisan selection of judges in Missouri. Beginning January 1, 2009, judicial appointments for the Missouri Supreme Court, courts of appeal, or office of circuit or associate circuit judge in the counties of Clay, Jackson, Platte, and St. Louis and the City of St. Louis will be made by the Governor with the consent of the Senate.

Judges appointed under this plan will be retained by passage of a concurrent resolution by the General Assembly 10 years after their terms begin.

FISCAL NOTE: No impact on state funds in FY 2008, FY 2009, and FY 2010.

PROPOSERS: Supporters say that the Missouri Nonpartisan Court Plan is an outdated and ineffective plan for selecting judges. Missouri adopted its plan for appointing judges in 1940 in response to abuses in the appointments process by corrupt political machines. In the last 67 years since its enactment, the plan has taken away the legislature's substantive check on the judiciary branch of government. Allowing the Governor to select judges, without the requirement of selecting from a pre-selected panel of judges, will restore the administrative branch's only check on the judiciary. No Supreme Court or appellate court judge has ever lost a retention election in the 67-year history of the plan which illustrates the ineffectiveness of the plan in removing poor judges. The Missouri Bar will still have considerable input in the selection of judges through recommendations during the selection process. The confirmation of the candidate by the Senate and subsequent retention by concurrent resolution most closely resembles the federal system and restores the proper legislative check on the judiciary.

Testifying for the bill were Representative Lembke; Bill Placke; and Paula Ginella.

OPPOSERS: Those who oppose the bill say that the Missouri Nonpartisan Court Plan is a bipartisan model that has a moderating effect on our state courts. The process for judge selection is a rigorous one. The commission charged with the selection of judges is representative of Missouri and thoroughly checks the judicial candidates. The fact that no Supreme Court

or appellate court judge has ever lost a retention election should be viewed as evidence that the plan works to appoint solid, well-qualified, and moderate judges. Some of the worst decisions affecting Missouri have come from the federal courts. The federal model, with lifetime appointments, harbors activist judges, both conservative and liberal, that rule in favor of their own political ideologies in lieu of sound legal philosophies. Changing Missouri's judicial selection plan to mirror the federal system is short-sighted, unwise, and takes away a system that is the envy of many state judiciaries.

Testifying against the bill were Steve Garner; Larry Dessem; John Holstein; Albert Reeder; Shook, Hardy & Bacon; and Missouri Bar.